

RMI File FRRM1770IB

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION – CLEVELAND

Farmers Insurance of Columbus, Inc.
individually and as subrogee of
its insureds Joshua & Amy Haney
P.O. Box 268992
Oklahoma City, OK 73126

and

Joshua & Amy Haney, husband & wife
1510 Elbur Avenue
Lakewood, OH 44107

Plaintiff

vs.

United States of America
c/o (1) The United States Attorney for the
The United States District Court for the
Northern District of Ohio
801 W. Superior Avenue, Suite 400
Cleveland, OH 44113-1852; and
(2) The Attorney General of the United
States
Department of Justice, Room 5111
10th & Constitution Avenue, NW
Washington, DC 20530

Defendant

CASE NO.

JUDGE

COMPLAINT

1. Venue and subject matter jurisdiction are proper in this court. There exists independent and exclusive federal subject matter jurisdiction under 28 U.S.C. Sec. 1346(b), et seq., The Federal Tort Claims Act. Venue is proper inasmuch as the tort occurred within the court's territorial jurisdiction.

2. Plaintiff Farmers Insurance of Columbus, Inc. ("Farmers") insured plaintiffs Joshua and Amy Haney by means of a policy of automobile insurance providing for collision insurance subject to \$500 deductible feature, which is not attached due to its volume.
3. At all times referred to herein, nonparty Richard T. Phillis was an employee of the U.S. Postal Service, an agency of the government of the United States of America, within the course and scope of his employment and operating a USPS vehicle at the time of the motor vehicle accident in question.
4. On or about September 15, 2011, Phillis negligently operated his motor vehicle, a 2001 USPS mail truck, on Chester Avenue eastbound near the intersection of E. 12th Street in the City of Cleveland, County of Cuyahoga, State of Ohio, thereby colliding with the eastbound vehicle of plaintiff Farmers' insureds, a 2004 Mazda 3, which was being operated by Joshua Haney, and as the direct and proximate result thereof causing property damage thereto.
5. More specifically, Phillis failed to yield the right of way by pulling out from a parked position in the curb lane and/or improperly changing lanes into the center lane and striking and damaging the rear passenger side of Haney's vehicle as it traveled by in the left eastbound lane.
6. The reasonable market value of the damages sustained to plaintiff Farmers' insureds' vehicle, which was a total loss, was \$8,017.44, after salvage credit of \$1,886.31.
7. Plaintiff Farmers paid to its insureds or on their behalf the sum of \$7,517.44 after application of the deductible and after salvage credit, pursuant to its collision coverage and became subrogated to the extent of such payment.
8. Plaintiffs Joshua and Amy Haney incurred a loss of their \$500.00 deductible interest.

9. Plaintiffs have satisfied all necessary prerequisites to filing suit in this court, including but not limited to exhausting their administrative remedies and timely filing this lawsuit. The USPS Tort Claims Accounting Service Center administratively denied plaintiffs' claims asserted herein by letter of 10/27/11 (USPS File TC201140654, Case No. 440-11-0549A), less than six months prior to the filing of this lawsuit. (The USPS also denied reconsideration of same by letter of 11/14/11.) A copy of the denial along with the claim form is attached hereto.
10. Plaintiffs have alleged proper claims under the FTCA against the U.S for money damages for loss of property caused by the negligent act of the identified employee of the federal government while said employee was acting within the scope of his employment under circumstances where the U.S. if it were a private person would be liable to the plaintiffs in accordance with Ohio law.
11. Undersigned counsel is authorized to represent plaintiffs in this action for purposes of the FTCA. A copy of the authority/retention letters (redacted) are attached hereto.

WHEREFORE, Plaintiff Farmers Insurance of Columbus, Inc. prays for judgment against the defendant United States of America in the amount of \$7,517.44; and plaintiffs Joshua and Amy Haney pray for judgment against the defendant United States of America in the amount of \$500.00. Alternatively, plaintiffs jointly pray for a judgment in the aggregate amount of \$8,017.44.

Respectfully submitted,

/s/ Timothy A. Ita

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